

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
NORTH SIGHT COMMUNICATIONS, INC.	)	File Nos. D045272, D114827, and B001099
	)	
Application for Modification of 800 MHz Trunked	)	
SMR Station WPHN735	)	
Bo Guaraguo, Puerto Rico	)	

**ORDER**

**Adopted: April 02, 2002**

**Released: April 03, 2002**

By the Deputy Chief, Commercial Wireless Division, Wireless Telecommunications Bureau:

**I. INTRODUCTION**

1. On April 25, 2001, the Commercial Wireless Division (Division) released an order granting the above-captioned modification application with the condition that the licensee, North Sight Communications, Inc. (North Sight), operate its facilities at a maximum power level of 100 watts Effective Radiated Power (ERP).<sup>1</sup> On May 25, 2001, North Sight filed a petition seeking reconsideration (Petition) of the decision to limit the power level to 100 watts ERP.<sup>2</sup> For the reasons discussed below, we grant the Petition.

**II. BACKGROUND**

2. On June 27, 1995, North Sight was granted a license for Station WPHN735 pursuant to a finder's preference award. North Sight was authorized to transmit on frequencies 856-860.0125 MHz, and its one-year construction deadline was June 27, 1996. North Sight attempted to locate the station at Bo Guaraguo, Puerto Rico, the site authorized to the target licensee who had lost the license pursuant to North Sight's finder's preference claim.<sup>3</sup> North Sight was unable to reach an agreement with the tower owner, however, and it subsequently filed an application for Special Temporary Authority (STA) to construct the station at Aguas Buenas, Puerto Rico, some 2.98 miles from the initially authorized site.<sup>4</sup> On June 24, 1996, North Sight was granted an STA for the second site. On the same day, the Land Mobile Branch of the Private Radio Bureau asked North Sight to provide the Commission with a 22 dBu V/m engineering study demonstrating that its operation at the second site would not expand the originally

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<sup>1</sup> North Sight Communications, Inc., Application for Modification of Trunked SMR Station WPHN735, Bo Guaraguo, Puerto Rico, *Memorandum Opinion and Order*, 16 FCC Rcd 8888 (2001) (*Order*).

<sup>2</sup> Petition for Reconsideration filed by North Sight Communications, Inc. (May 25, 2001).

<sup>3</sup> The original license authorized the site location at 18-17-34N, 066-09-24W.

<sup>4</sup> The new site is located at 18-16-54N, 066-06-46W.

licensed interference contour. On June 25, 1996, two days before the one-year construction deadline for the original site, North Sight reported that it had constructed the station at the second site.<sup>5</sup>

3. On July 17, 1996, approximately three weeks after the construction deadline, North Sight filed an application to modify its license to reflect its operation at the Aguas Buenas site. North Sight also filed a request for waiver of the Commission's freeze on acceptance of 800 MHz SMR applications.<sup>6</sup> As part of its waiver request, North Sight submitted a 22 dBu V/m contour study to demonstrate that the protected contour at the new site would not enlarge the protected contour of the system at the original site (Contour Study).

4. On October 15, 1998, the Division's Licensing and Technical Analysis Branch (Branch) denied North Sight's request for waiver and dismissed its modification application. In addition, because North Sight had not constructed at its originally licensed site, the Branch found its license to be cancelled for failure to construct.<sup>7</sup> North Sight petitioned for reconsideration, and the Branch denied the petition on October 19, 1999.<sup>8</sup> On April 25, 2001, the Division granted, on its own motion, North Sight's modification application for permanent authorization to transmit at Aguas Buenas, provided that it operated at a maximum power level of 100 watts ERP.<sup>9</sup> North Sight filed the instant Petition seeking reconsideration of the limit on its operating power level.

### III. DISCUSSION

5. In its Petition, North Sight first explains that it had prepared its Contour Study using 1000 watts ERP and the actual height above ground elevation along each radial to calculate the "originally licensed contour" for Station WPHN735.<sup>10</sup> Section 90.693 of the Commission's rules provides that the "originally licensed contour" for incumbent licensees that operate on the 806-821/851-866 MHz band "shall be calculated using the maximum ERP and the actual height of the antenna above average [HAAT] terrain along each radial."<sup>11</sup> Table 2 of Section 90.635(c) of the Commission's rules provides that the maximum allowable ERP for an antenna height of up to 305 meters is 1000 watts.<sup>12</sup> Because North Sight was originally licensed at an HAAT of 21 meters, we find that North Sight's originally licensed contour was correctly calculated using 1000 watts ERP. We further note that North Sight's license includes a condition that North Sight's "originally licensed parameters for determining permissible modifications pursuant to Rule 90.693 are 18-17-34N 06-60-924W, HAAT 21, ERP 250W." Accordingly, we modify North Sight's license for Station WPHN735 to calculate the originally licensed contour based on a maximum ERP of 1000 watts.

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<sup>5</sup> See Letter from Lloyd W. Coward, Counsel for North Sight Communications, to FCC, Wireless Telecommunications Bureau, Gettysburg, PA (Aug. 24, 1998) (citing North Sight's response to FCC Form 800-A letter requesting certification of timely construction).

<sup>6</sup> See Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, GN Docket No. 93-252, *Third Report and Order*, 9 FCC Rcd. 7988, 8047-48, ¶108 (1994).

<sup>7</sup> Letter from Ronald B. Fuhrman, Deputy Chief, Technical Analysis Section, Commercial Wireless Division, Wireless Telecommunications Bureau, to Lloyd W. Coward, Esq. (Oct. 15, 1998).

<sup>8</sup> Letter from Terry L. Fishel, Deputy Chief, Licensing and Technical Analysis Branch, Commercial Wireless Division, Wireless Telecommunications Bureau, to Lloyd W. Coward, Esq. (Oct. 19, 1999).

<sup>9</sup> *Order*, 16 FCC Rcd at 8890, ¶7.

<sup>10</sup> Petition at 5.

<sup>11</sup> 47 C.F.R. § 90.693.

<sup>12</sup> 47 C.F.R. § 90.635(c), Table 2—Equivalent Power and Antenna Heights for Base Stations in the 851-869 MHz and 935-940 MHz Bands Which Have a Requirement for a 32 KM (20 MI) Service Area Radius.

6. North Sight next argues that the Division should have granted it authority to operate Station WPHN735 at the modified site at 300 watts ERP, rather than the 100 watts authorized in the Division *Order*.<sup>13</sup> North Sight states, in its Petition, that it requested authorization in its modification application to operate at 300 watts ERP and that operating at 300 watts ERP would not violate Section 90.693 of the Commission's rules, which prohibits incumbent licensees from expanding their existing interference contours.<sup>14</sup> After reviewing North Sight's application, we find that it did request authority to operate at 300 watts ERP,<sup>15</sup> and that operating Station WPHN735 at 300 watts ERP will not expand North Sight's originally licensed interference contour. Accordingly, we grant North Sight's Petition to operate Station WPHN735 at 300 watts ERP.

#### IV. ORDERING CLAUSE

7. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i), 303(r), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), 405, and Sections 0.331 and 1.106 of the Commission's rules, 47 C.F.R. §§ 0.331, 1.106, the Petition for Reconsideration filed by North Sight Communications, Inc. on May 25, 2001, IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Katherine M. Harris  
Deputy Chief  
Commercial Wireless Division  
Wireless Telecommunications Bureau

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<sup>13</sup> Petition at 3 and 5. North Sight acknowledges that it had stated in a letter submitted during the application process that if the Bureau decided that operating at 300 watts ERP would impermissably expand its originally licensed contour, the modification application could be granted with an ERP of 100 watts. *Id.* at 3 (referencing Letter from Lloyd W. Coward, Counsel for North Sight Communications, to FCC, Wireless Telecommunications Bureau, Gettysburg, PA (Aug. 24, 1998)). In the *Order*, the Division found that operating the modified site at 1000 watts ERP would alter the original contour, but that operating at 100 watts ERP would not result in an expansion of North Sight's originally licensed contour. *Order*, 16 FCC Rcd at 8890, ¶7 (citing 47 C.F.R. § 90.693(b)-(c)). The *Order* did not consider the effects of operating the site at 300 watts ERP.

<sup>14</sup> Petition at 3-4. Section 90.693 of the Commission's rules provides that an incumbent licensee may add, remove, or modify its facilities without prior notification to the Commission, as long as the original contour is not expanded. 47 C.F.R. § 90.693.

<sup>15</sup> FCC Form 600—Application for Mobile Radio Service Authorization, Schedule G—Technical Data, filed by North Sight Communications on July 17, 1996.